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David E. Wilkins

University of Richmond, dwilkins@richmond.edu

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Governance within the Navajo Nation

Have Democratic Traditions Taken Hold?

David Wilkins

This essay crafts a description and analysis of the political and institutional context, structures, and issues of the Navajo Nation's government. We begin with a demographic, institutional, and ideological assessment of the nation as it currently stands, move to a historical overview of the nation from precontact times to the 1989 riots, and conclude with a short policy portfolio of three issues—land claims, gaming, and taxation—that will likely impact the shape and direction the nation will head into the twenty-first century.

The Navajo Reservation is a vast, rugged, and beautiful land. First delineated in the 1868 treaty, it has nearly quadrupled in size since then through some twenty-five additions. Today, the Diné land base is some 25,351 square miles (nearly 18 million acres), encompassing a large portion of northeastern Arizona, a part of northwestern New Mexico, and some 1,900 square miles in southeastern Utah. Interestingly, the Navajo Nation also includes three satellite (geographically separate) Navajo communities—Canoncito, Alamo, and Ramah—all in western New Mexico—and completely encircles two other tribes, the Hopi nation and the San Juan Paiute.

The Navajo Reservation represents 36 percent of all Indian lands in the continental United States.¹ This tremendous stretch of land, the largest of the 278 Indian reservations in the country, is slightly larger than the state of West Virginia. Nearly 15 million acres of Navajo tribal land is held in trust² by the federal government.

Preliminary analysis of the 2000 U.S. census data estimated that there are 250,000 Navajos living in the United States. Of this total, an estimated 180,000 live within the reservation proper (including the Eastern Navajo Checkerboard area). This population, the largest of any single tribe except for the Cherokee Nation of Oklahoma, which now claims to have 369,035 members, has nearly doubled in the last twenty years and continues to grow at an astounding rate. About one-third of all Navajos living within the reservation are less than sixteen years old, and the median age is 18.8 years.

Unlike many other reservations, which were allotted and opened for white homesteaders, allotment was never widely implemented on the Navajo Nation, and therefore the number of non-Indians and non-Navajo Indians remains quite small. According to the 1990 U.S. census, over 90 percent of the reservation population was Navajo. Although the Navajo population continues to grow rapidly, economic statistics are not nearly as encouraging. While per capita income for Anglo-Americans is \$15,252, it is only \$6,651 for Navajos. More than 56 percent of Navajos live below the poverty line, while only 15.7 percent of Arizonans are below that depressing threshold. The Navajo Nation in 1996 had a total labor force of 50,857. However, the unemployment rate in that year was 44.61 percent. This figure usually fluctuates between 38 and 50 percent depending on the season. Equally disheartening is the reality that while the total personal income of Navajos was over \$1 billion for 1996, less than \$300 million was actually spent within the reservation's borders, a leakage of over 76 percent to off-reservation communities who benefit from the purchasing power of Navajo shoppers.³

Politically, Navajos have been fairly active in tribal elections. For example, more than 93,000 Navajos were registered to vote in 1998, although only 42 percent of the registered voters actually participated in the fall presidential primary. This low turnout appears to reflect the disenchantment many Navajos feel with the ethical problems of several of their recent presidents.

Of the five agencies—Western Navajo, Chinle, Fort Defiance, Shiprock, and Eastern Navajo—Fort Defiance has the largest number of registered voters: 24,569 as of 1998. There is also evidence that more Navajos participate in federal, state, and local elections when a candidate's stand on issues of importance to Navajos is evident.⁴ Historically, Navajo voting patterns in tribal elections have been better than the voting percentages of Americans, whose turnout in American presidential elections ranks at the bottom of voting rates for twenty-seven countries with competitive elections. In 1992, for example, the non-Indian turnout rate for the presidential race was only 55 percent. This percentage actually represented a sharp rise from the previous four decades of presidential voting.⁵

The Navajo Nation Council currently consists of eighty-eight delegates, although a recent tribal referendum (September 5, 2000), if successful, would have reduced the size of the council from eighty-eight to twenty-four delegates.⁶ The final vote was 22,016 in favor of reducing the council to 9,319 opposed, but the referendum failed because it required 50 percent plus one of the total number of registered voters to cast a "yes" vote. The official number of registered voters on the reservation at the time of the election was 92,261; thus, 46,131 votes in favor were needed in order for the referendum to be approved.

The council is led by the speaker of the council, who is the presiding officer of the council. Although the Secretary of the Interior continues to wield veto power over certain council decisions, the Navajo political system, with the Title II changes in the executive branch in 1989, has more comparability than ever before to state governments and the federal government.

Many Navajos, however, believe that it is in their best interest to adhere to and enhance what is most distinctive about the Navajo people, especially in the areas of cultural retention and values specific to the Diné, and most important, to retain and invigorate the Navajo language. Otherwise, there is a sense that the nation might face a permanent and irreversible identity crisis. In fact, for some Navajos, this is the lesson of the appearance and destructive force of the hantavirus in 1993 and the reported appearance of two Navajo deities to an elderly woman in 1996 warning the people to revive traditional values and beliefs or face severe consequences.

Navajos also understand that sovereignty and self-government imply a necessity and the inclination to negotiate appropriate agreements with surrounding states, other tribes, and the federal government. A good example of this is the sovereignty accord signed in 1992 between President Peterson Zah and the governors of New Mexico, Utah, and Arizona. This policy declared that the interactions of the four sovereigns would "be predicated on a government-to-government relationship" and that all future relations would be "carried forward in a spirit of cooperation, coordination, communication, and good will."⁷

The Navajo Nation operates one of the most complex political systems in Indian Country. The nation, unlike some other tribal governments, generally approaches the negotiating table with a politically united front, although the events surrounding Peter MacDonald's last days in office in the late 1980s threatened that relative political homogeneity for a brief but intense period of time. This is not meant to imply that Navajo citizens are always in agreement with the legislative, executive, or judicial decisions of their policy makers, but rather points out that the intense intratribal conflicts that have recently hampered the self-determination efforts of tribes like the Cherokee of Oklahoma, the Tohono O'odham of southern Arizona, the Lumbee

of North Carolina, and others, are not a major or persistent problem for the Navajos.

In a sense, the political cohesiveness of the Navajo people can be viewed positively. It means that the Navajo Nation Council is the recognized voice of all Navajos, although there are always exceptions (e.g., at present, the Navajos living around Big Mountain may hold a contrary view). Generally, political divisiveness does not threaten the integrity of Navajo national government.

On the other hand, the absence of a politically active traditional government segment implies that a great deal of Navajo tradition has already been displaced. This loss has been more pronounced in the executive and legislative branches. The judicial branch, conversely, has shown a greater willingness to integrate traditional Navajo legal and social values into the already established Western legal system that is generally operative throughout the reservation.

For instance, in 1982, Navajo judges implemented Peacemaker Courts, which utilize traditional Navajo dispute resolution techniques to resolve local disputes.⁸ Additionally, the courts of the Navajo Nation have gone even further and in 1991 adopted a new code of judicial conduct. This code uses many principles of the American Bar Association's Model Code of Judicial Conduct, but it also incorporates a number of uniquely Navajo legal values as well.⁹

The Navajo people have witnessed the executive and legislative branches of their government, and the judicial to a lesser extent, assume the functions, the institutions, the technologies, the politics, and in some respects, even the goals of the larger society. Some Navajos feel it is not now possible, or even advisable, to reverse this trend and argue that a revival of traditional Diné structures of governance would disrupt existing internal and external working relationships already in place (i.e., within the tribe, and between the states and federal government). On the other hand, some of the traditional Navajo population and an increasing number of younger Navajos fear that, unless immediate steps are taken to reintroduce even more traditional Navajo concepts and structures beyond those already in place in the judicial branch, the qualities that distinguish Navajos from other tribes and racial/ethnic groups may be lost forever.

James Q. Wilson, a noted political scientist, has stated that "judgments about institutions and interests can only be made after one has seen how they behave on a variety of important issues or potential issues."¹⁰ In this regard, Navajo national government, as presently constituted, is still in its infancy. Nevertheless, members of the nation's council, the judicial system, the executive branch, and the growing tribal bureaucracy are part of a very old society with roots going back hundreds of generations.

Navajo citizens, like citizens of the larger society, tend to assume

that the way decisions are made now are the only way decisions can be made. In fact, there are many other ways to operate government based on popular consensus. Navajo traditions, history, and beliefs weigh heavily, whether consciously or not, on what is decided by tribal leaders.

DINÉ TRADITIONAL GOVERNMENT

From a Western European political perspective, the Navajo Nation was nonexistent as a representative political body until the 1920s. The Navajo people were, of course, cohesive in that they had a common linguistic and cultural heritage, lived within a well-defined territory, and referred to themselves as Diné. But their political organization, in general, did not extend beyond local bands that were led by headmen, or *naataanii*. We will soon discuss a political/ceremonial/economic gathering known as the Naachid that did, in fact, wield a more regionalized sphere of influence, but it is important to remember that even this body had no coercive powers and apparently never represented all Navajos. To put it another way, before the arrival of the Americans in the nineteenth century, the Navajo people did without a tribalwide representative government that resembled the governments of the United States or Western European countries.

The Naataanii (Headmen and Headwomen of Traditional Society)

The Navajo origin story contains the first specific reference to individuals regarded as leaders by Diné. These first *naataanii* were selected by the Diyin Diné (Holy People) to provide discipline to the people of the Third World. According to the story and contemporary oral accounts, as interpreted by Richard Van Valkenburgh, "[The] function of these leaders . . . was directed toward the correction of behavior, the maintenance of certain moral injunctions, such as the prohibition of incest and adultery, as well as the enforcement of economic laws." The *naataanii* also served as intermediaries between the Diné and the Diyin Diné. When the Spanish arrived in the late 1500s, the fundamental political entity in Navajo society was the natural community. This collective unit of government was basically economic in nature, geographically determined, and was distinct from other local units. Population figures for these communities vary, but the most informed accounts estimate that a natural community contained from ten to forty families. Each of these settlements was directed by a *naataanii*, who received advice and counsel from *bastói* and *bataali*.¹¹ Internal matters, intertribal affairs, hunting, and food gathering were issues regularly addressed by this deliberative body of leaders.

The Navajo people recognized, as did other indigenous nations like the Cherokee and the Creek, the importance of having separate war and peace leaders for the successful functioning of tribal harmony. Seldom did one person fill both offices. To attain the position of a war naataanii, an individual needed extensive knowledge of one or more of the War Ways. Anyone who had acquired this ritual knowledge was eligible to serve as a war leader. These were ceremonies designed to bring about successful raids or counterraids against outside forces. The Navajo attitude toward war leaders, according to Hill, was equivocal. That is to say, while these individuals were respected as great fighters, they were also frequently criticized. It was believed by some Navajo that war leaders were largely responsible for the defeat and imprisonment of Navajo at Bosque Redondo in the 1860s.¹²

A peace naataanii, by contrast, was chosen or elected if he or she had knowledge of the Blessing Way ceremony, and only if he or she had excellent moral character, great oratorical abilities, and charisma. The individual also had to possess the ability to serve in both the sacred and day-to-day aspects of Navajo life and culture. In effect, the selection of a naataanii followed a democratic process involving the adult population of a natural community.

Once selected, naataanii were put through an initiation ceremony during which the leader's lips were coated with corn pollen taken from the four sacred mountains. This action was meant to enable the leader to give powerful speeches. At such an occasion songs were sung and sacred tobacco, also brought from the sacred peaks, was smoked by distinguished individuals.¹³

The peace naataanii was not a hereditary position. However, once in office, the individual usually remained for life. These persons, before their death, were expected to step down and identify a successor, although the community could decide not to accept the recommendation. There is evidence that women were occasionally selected for this important position. The peace leader oversaw the economic development of the community, arbitrated family disputes, dealt with witchcraft issues, and served as the diplomatic representative between their natural outfit and other local communities, tribes, and later with the Spanish, Mexican, and American governments. Neither a peace nor a war naataanii, it is important to remember, had coercive powers, and his or her effectiveness depended almost entirely upon the quality of their personal character.

THE NAACHID

Based largely on oral accounts, there is strong evidence to support the existence of a periodic tribal assembly. This regional gathering of peace and war leaders was called a *Naachid*, literally meaning "to gesture with

the hand." The most detailed written account of a Naachid (the last one was reportedly held in the 1850s or 1860s) comes from the writings of Richard Van Valkenburgh. He noted that the assembly was called "at two and four year intervals and, should a tribal emergency arise, could be called in an odd year." Twenty-four leaders—twelve war and twelve peace (some sources claim that there were six of each)—would meet in a specially constructed hogan. Valkenburgh noted that at a prescribed time during the assembly, a four-day dance was conducted. After the dance, a succession of meetings and dances was held throughout the winter, with the assembly adjourning after the spring planting.

The Naachid was held for several purposes. Ceremonially, it was conducted to insure an abundance of water and soil fertility. It also served at times as a war council or a peace council. For example, it was reported in December 1840 that "Navajos held a Naachid ceremony west of Canyon de Chelly for the purpose of making peace with the Mexicans. On this date, José Andrés Sandoval, justice at Jemez, reported to the governor: 'At nightfall of this day [December 14] a Navajo known as Anceluno presented himself in this pueblo [Jemez] soliciting peace in the name of his nation.'"¹⁴

During peaceful years, the peace naataanii chaired the assembly. However, when war or other outside threats arose, the war naataanii had the proceedings. Women played an active role in the Naachid, and could speak openly to the gathered delegates if they had participated in raids or had achieved prominent status through some other means. The decisions of the Naachid were not binding on the assembled Navajos (and certainly not on any outfits not present), and those who disagreed with the gathering's decisions were not compelled to obey and suffered no reprisals.

Throughout the millennia when the Naachid was active, it played a number of vital roles. When war began, many Navajo could gather quickly. Although natural community leaders exercised considerable regional influence, a political regrouping occurred when the Naachid convened. Speakers at the assembly were not chosen by formal votes; instead, the general assembly's informal approval and acknowledgment were required. Some accounts stress that the Naachid's primary role was ceremonial in nature and that it functioned politically only when outside threats compelled the assembled Navajo to act as a political unit.

DINÉ GOVERNMENT, 1700–1846

Despite Spanish intrusion into Navajo country by the early 1600s and continuing through the early 1800s, traditional Navajo governing structures remained intact. Although the Navajo population had gradually shifted west, largely because of Spanish, Ute, and Comanche

incursions, the natural communities, the naataanii, and the Naachid continued to serve as the basic Navajo political units. There is evidence that during the Spanish period five loose Navajo political subdivisions coalesced. These were located at Mount Taylor, Cebolleta, Chuska, Bear Springs, and Canyon de Chelly.

The Spanish, meanwhile, continued to carefully "select" those Navajo leaders who would best serve them as political and military allies. For example, the Navajo headman Don Carlos was chosen and anointed by the Spanish as the "Navajo General" of the entire nation. But when he proved to be ineffective, according to the Spanish officials, he was removed from office and replaced by Antonio el Pinto. The Spanish governor de la Concha wrote this glowing, if questionable, description of el Pinto and described his alleged authority over all Navajos:

[A]n Indian of extraordinary talent, and one whom the whole nation respects and obeys in the manner which is customary to civilized nations with an authorized commander. These qualities are rare in a class of people who are led along the path of reason by only profit or fear and this is recognized by his own people, which causes them to venerate him.¹⁵

There were other occasions when the Spanish attempted to "designate" Navajo individuals and declare them the head of all the nation. In fact, Spanish diplomatic and military efforts to firm up their position in New Mexico by exploiting one group of Navajos against others led to a long-lasting schism between the Navajo in the early part of the nineteenth century that lasts to this day.

The separation began in 1818 when a Navajo headman, Joaquin, visited the Spaniards in the Jemez Pueblo. Joaquin told the Spanish officials that despite his efforts to maintain peace, other Navajos were preparing for war because they were angry at Spanish encroachments on their lands. Joaquin, frustrated at what he considered the more militant attitude of western Navajo, had physically relocated his own people closer to the Spanish settlements and went as far as severing connections with the rest of the Diné people. This action placed Joaquin's small band into the role of "being traitors to the main Navajo tribe and subservient to the government at Santa Fe. From this time forward, Joaquin's small group would be referred to as the Diné Ana'i or Enemy Navajos."¹⁶

Schemes to fabricate a central Navajo political figurehead were also employed at various times by the Mexican and U.S. governments. The anointed "Navajo Generals," however, never represented more than a handful of Navajo families despite the contentions or grandiose terms applied to them by the Spanish, Mexican, and U.S. governments.

DINÉ GOVERNMENTAL CHANGE DURING THE EARLY AMERICAN PERIOD, 1846-1921

When the United States replaced the Mexican government as the dominant foreign influence in the Southwest in 1846, it was immediately faced with the task of trying to establish peaceful relations with the independent and powerful Navajos, the various bands of Apaches, and many other tribes. This Herculean task was complicated by the decentralized Navajo political structure and by the enslavement of a large number of Navajo women and children being held in captivity by New Mexicans.

The U.S. military and government officials, despite some seventy years of experience in dealing with tribal nations, naively believed that a treaty signed by a few Navajo headmen would bind the entire nation. Thus, the American government, like the two preceding nations, equated Navajo political and social structures with those of the federal and European political systems.

Between 1846 and 1868, the Navajo signed nine separate treaties with the United States. The first took place in the fall of 1846 when the U.S. Army and over five hundred Navajos, led by fourteen headmen, signed a treaty of peace at Ojo del Oso (Fort Wingate, New Mexico). Navajo raids continued, however, reflecting the decentralized political reality of Navajo tribal existence. This treaty, like those of 1848, 1851, 1855, two in 1858, and 1861, was not ratified by the U.S. Senate. Only the 1849 and 1868 treaties were ratified. The early nonratified treaties usually included provisions regarding the establishment of peace, the regulation of commerce, the exchange of prisoners, and the return of stolen property. The later ones focused more on peace and clarification of Navajo territorial boundaries.

Sometime before 1858, the Naachid apparently ceased to function. American military campaigns and the hardships of widespread disbursement of the Navajo people severely inhibited gatherings of this tribal assembly. The Long Walk to Fort Sumner and the subsequent four-year confinement of Navajos at Bosque Redondo from 1864 to 1868 worked against the practice of keeping the Naachid functional. The evidence suggests that the Naachid was never again reconstituted because most of the older Navajos who knew how to conduct it had died during their oppressive years of imprisonment.

With the Naachid permanently broken, the Navajos turned to individual *naataanii* for direction and leadership. General Carleton, the mastermind behind the devastating Fort Sumner experience, had actually planned in the early stages of preparing the fort to further break the Navajo natural leadership by subdividing the Navajo population (more than eight thousand) into twelve villages, to be situated half a mile apart. Each village was to have a chief or headman, appointed by

the military officer in charge, and one subchief for every one hundred Navajos. Carleton's "political organization" plan for the nation was never implemented, however, because Navajos preferred to live in their extended families and small bands and did not want to live in close proximity with the Mescalero Apache, their enemies, who were also confined at the fort.

When the Navajos were released from Fort Sumner, they recognized a need to reconstitute themselves, politically, socially, and ceremonially. Oral accounts relate that sometime during the fall of 1868, the people, led by their peace *naataanii* and medicine men, assembled in Window Rock to perform a Blessing Way ceremony. For seven days, thirteen leaders and medicine men fasted and prayed, seeking spiritual guidance and protection. During the ceremony "Sacred Mountain Dirt Bundles" (*dzil leezh*) were tied together, and each of the leaders received a bundle. When the ceremony concluded, each of the leaders was instructed by the medicine man to carry his personal bundle through Window Rock four times. After this, the people dispersed to the four directions to begin their lives anew.

For a period, the Indian agent accepted those Navajo who had emerged from Fort Sumner as the recognized political leadership of the nation, including Barboncito, Ganado Mucho, Delgadito, Narbona, and Mariano. By the early 1880s, the Navajo Indian agent told the Secretary of the Interior that there were four major settlements of Navajos, each under the control of a chief or chiefs: North of Agency, led by Chief Francisco Capitan (population 4,000); East of Agency, Chief Manuelito (population 4,000); South of Agency, Chiefs Mariano and Tsi'naajini Biye' (population 4,000); and West of Agency, led by Head Chief Ganado Mucho (population 4,000).¹⁷

Gradually, as these leaders died, and with federal policy shifting toward a more coercive form of assimilation, the Navajo Indian agent began acting in a more autocratic fashion. From 1878 to 1910, the "Head Chiefs" of the Navajo people were "appointed" by the Navajo Indian agent and were confirmed by the Secretary of the Interior. Manuelito, who had been appointed in 1870, served until 1884 when the Indian agent replaced him with Henry Chee Dodge, a bilingual, mixed-blood Navajo.

Besides the head chiefs, regional *naataanii*, also selected by the agent, continued to guide their communities. There were an estimated thirty local headmen functioning throughout the reservation in 1900. The Indian agent annually assembled the head chief and regional leaders to discuss important issues. Clearly, the Navajo Indian agent, living at Fort Defiance by this time, wielded an extreme amount of authority. Valkenburgh pointed out that "agents deliberately smashed all native power, and those *naat'aaniih* who refused to 'play ball,' lost all govern-

ment recognition and, without that, soon lost influence over the people in that region."

Although the agent selected and directed these "Agency Chiefs," Mary Shepardson reported that there remained "the old informal leaders, local headmen, wealthy stock-owners, ceremonial practitioners, and heads of large family groups [who] constituted the defacto leadership of the localities."

By 1900 the Navajo Reservation had nearly quadrupled in size through executive order extensions, and it was evident that a single federal agent could no longer oversee the affairs of such a greatly expanded land base. Moreover, the population had doubled and then stood at nearly 15,000. Thus, to regain a better administrative position, Navajo territory was divided into six separate agency jurisdictions, each with their own superintendent, between 1901 and 1934. This included an agency for the Hopi Tribe that also served Navajos. The agencies were the Western Navajo at Tuba City; the San Juan Agency at Shiprock; the Navajo Agency at Fort Defiance; the Pueblo Bonito at Crownpoint, New Mexico; the Leupp Agency at Leupp; and the Hopi at Keams Canyon.

According to Robert Young, the subdivision of the reservation into six separate units, combined with an increase in staff and a smaller land area, "led to the abandonment of the previous system of appointive chiefs. . . . By 1910 the use of appointive chiefs was abandoned completely."¹⁸

THE FIRST NAVAJO TRIBAL COUNCIL

As noted above, there was no Navajo national government before the 1920s except for the brief if coerced cohesion generated by the Fort Sumner incarceration. But when oil was discovered on the treaty portion of the reservation in 1922, the federal government established the semblance of a central Navajo governing authority with which Washington might interact in providing leases for mineral development. Prior to this, interested energy companies had to contact the agency superintendent, who then convened a "general council" of adult Navajos in that agency to consider the companies' requests for leases. But as Lawrence Kelly noted, "the obvious implication was that the councils were to be subordinate to the government agent," for the Navajos "were not members of any deliberative body which had been in existence prior to that time."

Oil and gas companies, anxious to exploit the perceived mineral wealth of the reservation, pressured the Department of the Interior and agency superintendents to convene additional "general councils" in both the San Juan (Shiprock) and Southern Navajo (Fort Defiance)

agencies. And although several new leases were granted by the Navajos to the companies, most were rejected.

Rebuffed, the oil companies then exerted more pressure on the Interior Department and the commissioner of Indian Affairs (CIA) to take away the inherent leasing power of the Navajos and place it in the hands of a federal representative. The Navajos, however, refused to surrender their right to lease their lands.

Two developments in the fall of 1922 signaled an end to the leasing stalemate. First, the Interior Department changed its policy and now asserted that oil and gas royalties, bonuses, and rentals derived from discoveries in any part of the reservation belonged to the Navajo Tribe as a whole, and not "exclusively to those Navajo residents in whose jurisdiction it was found." Second, this policy change resulted in the Interior's creation of a "business council" that was initially composed of three Navajos authorized to deal with lease grants: Henry Chee Dodge, Charlie Mitchell, and Daagha'chii Bikiss. These men were apparently selected by the Secretary of the Interior. However, the legality of this nonrepresentative and nonelected body was immediately questioned because it utterly failed to meet the 1868 treaty requirement of securing the approval of three-fourths of the adult males when any transactions involving Navajo lands occur.

A more representative council had to be devised. Albert Fall, the Secretary of the Interior, on January 3, 1923, proceeded to contact Mr. Herbert J. Hagerman, former territorial governor of New Mexico, and offered him the position of "Special Commissioner to Negotiate with Indians." Hagerman accepted the appointment as commissioner to the Navajos, and was granted general authority over the five Navajo agencies. On January 23, the CIA Charles Burke issued a document entitled "Regulations Related to the Navajo Tribe of Indians," which the Navajos had not seen. This document established procedures to create the first Navajo Tribal Council. The council was to consist of one delegate and one alternate from each agency, plus a chair and vice chair. This body was touted as an organization "with which administrative officers of the Government may directly deal in all matters affecting the tribe." The chair of the council was to be elected by the council delegates at the first meeting and was to be selected from the tribal membership at large. Apparently, once chosen, the chair and vice chair could have held office indefinitely since no fixed terms were specified. The chair also functioned as a council member as well as the presiding officer following his election. The vice chair was to be selected from the council's own membership.

If an agency failed to elect a delegate to the council within thirty days, the Secretary of the Interior would fill the position with his own appointment. Furthermore, the tribal council could not meet without the commissioner's presence. And interestingly enough, the Interior

Department reserved the right to remove any council member upon proper cause. The document contained no statement of legislative or other formal powers. The council was to serve primarily as a consultative group, though it did have power to consent to leases.

Once these regulations reached the Navajos, they attacked the removal power of the Secretary of the Interior and objected to the number of delegates and alternates representing each agency. Subsequent to these objections, the regulations were rewritten on April 24. The new laws excluded the removal clause and provided for a forum, interpreters, and a means of succession in the event that the chair or vice chair positions became vacated. Finally, the number of delegates and alternates to the council was increased from twelve to twenty-four. In other words, there were to be twelve voting delegates and twelve nonvoting alternates.

The Secretary of the Interior, nevertheless, maintained tremendous authority over the tribal council. He could make appointments when the Navajos refused to do so in a given period of time; meetings could be held only in the presence of a federal representative; and the council could convene only at the discretion of the commissioner of the tribe, who was solely responsible for calling the meetings.

The newly elected councilmen held their first meeting at Toadlena, New Mexico, on July 7, 1923. The council elected Chee Dodge as chair, but for some reason failed to elect a vice chair. Then they unanimously approved a resolution—drafted in Washington—which gave Commissioner Hagerman the authority to sign all oil and gas leases “on behalf of the Navajo Indians.” In effect, their first action essentially eliminated the principal reason the council was organized, which had been to approve leases on behalf of their people. According to Lawrence Kelly, the council apparently agreed to this resolution because they believed that they “would receive government aid in securing new lands.” The council would not regain this important power until 1933.

The tribal council met annually, usually for two days, and generally functioned as little more than an “advisor” to Commissioner Hagerman during the next decade of its existence. The council was largely a creature of the Secretary of the Interior and certainly not an organization exercising powers of self-government. In April 1927, the council’s regulations were amended to allow council members and executive officers to serve five-year terms, instead of four. The following year, October 15, 1928, a third set of regulations was issued by the CIA. These included provisions that gave women the right to vote, authorized the CIA instead of the commissioner of the Navajo Tribe to call meetings, and reestablished the term of office at four years.

There were but two other major changes in the regulations before tribal reorganization began in 1936. On October 3, 1933, under

Tom Dodge's chairmanship (Chee Dodge's son), the tribal council, in an act of sovereignty, "revoked" and "canceled" the power of attorney it had ceded to the federal government at the council's first meeting in 1923. The council also became more outspoken in the kinds of issues it would concern itself with, including chapter organization, employment, education, water projects, tribal resources, health, education, and livestock issues.¹⁹

On July 10, 1934 the council unanimously voted to give council alternates the right to vote as full-fledged delegates. The tribal council now had twenty-four functioning members and was adamant about issues that other governments concern themselves with.

NAVAJO TRIBAL REORGANIZATION, 1936-1938

The subject of Navajo tribal government in the 1930s is closely intertwined and affected by the quality and extent of Navajo lands, erosion cycles, the personalities of certain tribal and federal workers, water development projects like the Hoover (also called Boulder) Dam, and, of course, livestock. The Navajo subsistence system was already in danger by 1930 as evidenced by the William Zeh report. Zeh was a forester for the BIA who, in a detailed report on the overgrazed Navajo range, reported that 1.3 million sheep and goats were living on less than 12 million acres of land. Such large numbers of livestock (horses and cattle were not included in his data) were causing real damage to the land. But Zeh did not recommend massive livestock reduction. Instead, he called for the reservation to be expanded, urged the elimination of excess horses, and suggested improved breeds of sheep and goats. He only recommended a gradual reduction in the number of goats.²⁰

In fact, the winters of 1931-32 and 1932-33 were particularly harsh, and thousands of sheep and goats starved, reducing the number of sheep and goats. Simultaneously, Congress authorized the Colorado River Project, whose main cog was Hoover Dam. When completed, the dam created a 150-mile-long lake that protected much of Southern California, created an improved irrigation system, and generated electricity for the Southwest.

But within a few years, the U.S. Geological Survey estimated that silt from the San Juan and the Little Colorado Rivers, which course through the Navajo Reservation, would eventually pile up behind the dam and make it useless within a few years. In effect, the Hoover Dam was the catalyst for the drastic livestock reduction that would then ensue. According to White, the government "misunderstood the erosion cycle and its causes and blamed it largely on Navajo lands" and acted more to benefit economic development in the Southwest than to

protect Navajos.²¹ Ultimately, Navajo herds were dramatically reduced from 1,053,498 sheep units in 1933 to 449,000 in 1946 when active reduction was stopped.

In effect, the stock reduction program served as the impetus by which the Navajo people came to see that the decisions of their government, the Navajo Tribal Council, for good or ill had real import for their lives and pocketbooks. CIA John Collier convinced the tribal council to approve and participate in the livestock reduction program with promises that if it did new lands would be added to the reservation in Arizona and New Mexico. Although some lands were added to the Western Navajo Agency, the promised lands were not forthcoming in New Mexico due to powerful non-Indian interests in the state. Gradually, the Navajo people lost what little faith they still had in the tribal council.

The council, for its part, was in a profound dilemma. The need for some livestock reduction appeared a reasonable request, and the opportunity to gain additional lands if they did was an important impetus to accept the government's reduction plan. But the council was already feeling pressure from the people that the program was not fair and was leaving many Navajo families destitute. On the other hand, if they had not supported Collier and his soil conservation program, it was clear that the government would carry out stock reduction anyway.

The Navajo Tribe, like most other tribes, was given an opportunity to establish a constitutional form of government in 1934 under the auspices of the Indian Reorganization Act. This major law was the brainchild of CIA John Collier, and it gave tribes a two-year period to vote on whether they wished to adopt or reject the act's provisions. For many reasons, not the least of which was the government's forced reduction of Navajo livestock, the Navajo people narrowly rejected the act, by a vote of 8,197 to 7,679. Collier was deeply hurt by the Navajos' rejection of his measure. But he continued to express a need for an overhaul of Navajo government. And as already noted, many Navajos now viewed the tribal council with disdain, believing that it had aided and supported the federal government's stock reduction program and did not truly represent the views of the Navajo people.

The last meeting of the original tribal council was held November 24, 1936, under acting chairman Marcus Kanuho.²² Jacob C. Morgan, the Shiprock council delegate, and the most outspoken opponent of stock reduction, protested the impending breakup of the old tribal council. Nevertheless, during this last meeting the council established an executive committee charged with calling a constitutional assembly for the purpose of writing and adopting a tribal constitution.

This executive committee, led by Chee Dodge, Marcus Kanuho, Henry Taliman, and Father Bernard Haile, toured the reservation throughout the winter, and by February 1937 had a working list of 250

nominees for the constitutional assembly. The executive committee ultimately pared this number down to seventy. When the seventy delegates met that spring, their principle objective was to appoint a committee to draft a constitution. Once written, it would be sent to the Interior Department for approval and then sent back to the council and tribal members for ratification.

The constitution was completed later that year. The proposed organic act mirrored those of tribes who had accepted the Indian Reorganization Act's provisions. It laid out the membership requirements and created a council as the legislative body. It was to be composed of seventy-four delegates, apportioned at the rate of one for every six hundred Navajos. It spelled out eligibility criteria for council members and provided for six-year terms of office. The executive branch was to consist of a president and vice president, who would also serve six-year terms. Importantly, the constitution outlined and delimited the council's powers. These included, but were not limited to, the regulation, use, and distribution of tribal property; the regulation of trade; the levying of taxes; the establishment of inheritance laws; and the hiring of legal counsel.

The constitution also contained a clause, common for that time, which declared that "any resolution or ordinance adopted by the Navajo Council or Executive Committee shall take effect as soon as approved by the Secretary of the Interior."²³ In other words, all the tribes' decisions, had the constitution been adopted, would have had to be approved by the Secretary of the Interior. For a number of complicated reasons,²⁴ including the fact that Morgan and his associates had become so vehement in their opposition to the constitutional process, the Secretary of the Interior, fearing a permanent political split in the tribe and more hostility to the stock-reduction program, rejected the constitution. Instead, the BIA gave the assembly delegates the option of declaring themselves to be the new tribal council. The delegates voted themselves into office, and later in 1938 the Secretary of the Interior issued a simplified set of bylaws called "Rules for the Navajo Tribal Council." These new "Rules," however, were sufficient only for the election of the new tribal council and executive officers. Furthermore, the 1938 "Rules" did not define the scope or limits of the council's authority, nor did the Navajo electorate have any say about the regulations.

Following these latest "Rules," the first election was held September 24, 1938; Jacob C. Morgan was elected chairman and Howard Gorman was chosen vice chairman. The first tribal council meeting was convened on November 8, 1938. The 1938 bylaws increased the membership of the council to seventy-four delegates. The CIA lost the right to appoint delegates, but the council meetings still required the presence of a federal official, the superintendent, "who occupied a position beside the chairman in the conduct of Council meetings."²⁵

The council, during the first meeting, chose not to bring forward the executive committee. The delegates insisted that all decisions be made by the full council. This was done in part because the previous executive committee had approved the hated "grazing regulation." The 1938 "Rules for the Navajo Tribal Council," with important modifications to be discussed later, still constitute the basis for present-day Navajo national government. Robert Young, in his work *The Navajo Yearbook*, pointed out that

There has been a growing tendency on the part of the federal government as well as that of the Tribe, to equate the powers of the Council with those residual sovereign powers remaining in the Tribe although the Tribe has never acted formally to recognize the Council as the governmental organization authorized by *the people* to exercise those powers in their behalf. (emphasis added)

DINÉ TRIBAL GOVERNMENT, 1940-1989

The 1938 "Rules" were amended several times during this period, but in some important respects the current structure of the Navajo national government remained subject to the influence of the Interior Department. This is reflected in the fact that major amendments and changes in the organization or election procedures still require approval by the Secretary of the Interior.

During this half century, the Navajo Nation fully entered the wage economy. The nation was also dramatically affected by World War II. Some 3,600 Navajos served in the military and nearly 15,000 worked in war-related activities. When this global conflict was over, most of these Navajos returned to the reservation to find scant resources and even fewer jobs. Their agitation about these conditions led some Navajos to move permanently to cities in search of employment.

Two other developments were of profound importance in the late 1940s. In 1947, the tribal council established an advisory committee (formerly the executive committee) that, some say, institutionalized Navajo government. Also in 1947, the council entered into a contract with an attorney, Norman Littell, who was to oversee the tribe's legal claims against the United States and the land conflicts with the Hopi Nation, and who also provided general legal services to the nation.

Three years later Congress stepped forward in an effort to ease the economic suffering of the Navajo and Hopi peoples. In 1950 Congress enacted the Navajo-Hopi Long-Range Rehabilitation Act, which funneled some \$88 million to both tribes for a wide range of programs aimed at economically and socially revitalizing both tribes. Importantly, this measure also authorized the Navajo to adopt a constitution,

which, once written, would have to be ratified by the Navajo people. Littell, aware of this provision even while the act was pending, soon had written a draft constitution. In his own words the "constitution has been drafted to give you, the Navajo Tribal Council and the Navajo people, all the power I could get into that constitution under the law."²⁶

The 1950s are referred to by some as the time when the Navajo Nation was born. This is arguable, but it is certainly true that many changes occurred that broadened the scope of Navajo government. It represents an era, according to Peter Iverson,

When Navajo government leaders were engaged in broadening the scope and ambition of tribal government programs and reorganizing the structure of Navajo government in order to carry out these programs. The existence of newly found revenue encouraged these leaders to involve the tribal government in unprecedented fashion . . . to improve the quality of Navajo life. Significant revision of the government's organization included revival of the chapter system and the expansion of the responsibilities of the legislative, executive, and judicial branches.²⁷

Let us return to the issue of a constitution. In 1953, a more fully developed constitution was completed and sent to the CIA for review and approval. Like the constitutional attempt in 1934, it also was similar to those of Indian Reorganization Act tribes who had approved constitutions. However, several years of negotiating with BIA officials convinced the tribal council that "under the language of the Navajo-Hopi Long-Range Rehabilitation Act, if the constitution is adopted, it would strengthen the veto power of the Secretary rather than weaken it."²⁸ This fear of secretarial power would remain an obstacle to the approval of a constitution for a number of years, though ironically the council's foundation itself continues to rest upon secretarial regulations that give the Secretary of the Interior veto power over tribal ordinances in a number of major areas. Thus, the tribal council has continued to exercise a growing array of powers through resolutions that remain subject to secretarial veto. In 1962 the tribe's resolutions were codified into a tribal code modeled after federal codes. In a broad sense, the codified tribal code was the Navajo constitution, though it has never been ratified by the tribal electorate.²⁹

From 1962, when the tribal code was codified, until the civil unrest in 1989, the Navajo government continued to expand in profound ways. The availability of income, both from the federal government and from the extraction of natural resources (i.e., timber, coal, oil, gas, uranium, etc.), provided the tribal government with funds, however tenuous, that enabled the tribe to exercise a growing measure of self-determination.

The civil rights movement spawned the Great Society and the War on Poverty programs of the federal government, which, taken together, increased the tribe's position nationally and internationally and were also positive developments that facilitated growth within the nation. For example, in 1965 the Navajo Tribal Council established the Office of Navajo Economic Opportunity (ONEO), which received federal funding from the Office of Economic Opportunity for neighborhood youth corps programs, small business development, Head Start programs, etc. Peter MacDonald, a future chairman, was the first executive director of ONEO. Yet another Great Society program, the Office of Navajo Economic Legal Aid and Defender Society (DNA), was also established under ONEO. Peterson Zah, another future tribal chairman/president, headed this organization for a period. Both Zah and MacDonald used these important positions as springboards into tribal leadership. Education also received the focused attention of the tribal council, and in 1968 the council officially approved the establishment of Navajo Community College, the first tribally controlled community college in the nation.

Peter MacDonald was elected chairman in 1970. He served three consecutive terms before being defeated by Peterson Zah in 1982. MacDonald was reelected in 1986. The MacDonald years began during the so-called Indian self-determination period, intended to allow tribes greater political and economic freedoms to govern their own lives and resources. MacDonald, the first university-educated chairman, was a dynamic speaker and was effective, particularly in his early years, in attracting national attention and prestige to the nation. There were also a number of impressive and startling changes in Navajo government structure with MacDonald amassing a tremendous amount of power in the executive branch.

Reorganization of the tribal government consisted of two parts: "the revision and alteration of the council committee system and the restructuring of the tribal government framework. Through the first part of reorganization, many new council standing committees became established; in addition, the chairman gained the power to appoint members to all standing committees."³⁰ The 1971 reorganization also radically revised the executive branch of Navajo government. Five central offices that dealt with business management, operations, etc., were each headed by a director appointed by MacDonald and serving at his pleasure. Interestingly, this massing of political power in the executive branch and away from the legislative branch was approved by the council with little apparent dissent.

MacDonald's second and third terms were, however, mired in controversy. The chairman was indicted in 1977 on charges of mismanagement of federal funds, and issues like apportionment, the Navajo-Hopi land dispute, the controversial creation of a supreme judicial

council in 1978, the tribal pension scheme in 1979, and MacDonald's support of Ronald Reagan for president in 1980 only intensified concern over the state of his administration of the Navajo government.³¹

Peterson Zah broke MacDonald's stranglehold on the chairmanship in 1982. Zah emphasized a partnership policy with the tribal council, the Navajo people, and with the Hopi, local, state, and federal governments. He also had active economic development initiatives, pushed vigorously for the renegotiation of inequitable energy leases, and stressed the importance of education of Navajo youth. In fact, education was his first priority, and very quickly the Navajo Tribal Council adopted new educational policies for the tribe and reservation schools.³²

Reapportionment and tribal government reform, however, were two of the most important issues confronting the government. A new reapportionment plan was finally adopted on December 6, 1985. And in 1985 the Navajo Nation reorganized its court system through the Judicial Reform Act. This measure created the Navajo Supreme Court and revised the tribal court judge selection process.

Despite the stability Zah brought to the Navajo Nation, when his term neared completion, MacDonald once again entered the picture. In an extremely close election, MacDonald had 30,746 votes (carried 54 chapters) to Zah's 30,171 votes (carried 53 chapters); three chapters actually tied in their votes for the two. MacDonald was returned to power and was sworn in on January 13, 1987. MacDonald's inaugural speech seemed to indicate a man who had mellowed somewhat. He emphasized the need for jobs, talked about the importance of education, and, like Zah, stressed partnerships with the business community and the state governments. But he insisted that the Navajo people would continue to hold the federal government accountable as their trustee.

Very soon, however, developments began to spiral out of control. First was the suppression of freedom of the press with the closing of the tribe's newspaper, the *Navajo Times Today*, in February 1987. Second, a special session of the Navajo Tribal Council, called for April 1987, was killed because it lacked a quorum. The purpose of the session was to have been tribal government reform. Third, MacDonald convinced the tribal council to purchase the Big Boquillas Ranch just west of the Grand Canyon. It was this final issue, the Big Bo deal, that would be at the vortex of events that led to the 1989 riot in Window Rock in which several Navajos were killed or injured.

DEMOCRATIZATION OF THE NAVAJO NATION: TITLE II AMENDMENTS, 1989 TO PRESENT

By 1989 it was evident that while theoretically the Navajo Nation had a three-branch government, the actual state of affairs revealed that the

executive branch, under MacDonald, was vastly superior to the legislative branch and, in fact, dominated the law-making branch. MacDonald was chairman not of the Navajo Nation proper, but of the Navajo Tribal Council. The office of the chair had accumulated vast powers, dating back to the 1950s, an accumulation that grew tremendously under MacDonald's reign.

The chairman by 1989 headed not only the executive branch, but also held legislative powers greater than those exercised by the Speaker of the House of Representatives and was also the principal representative of the tribe to the outside world. The chairman presided over all meetings of the tribal council, selected all standing committee chairs and members, including those of the powerful mini-council and the Advisory Committee (which he chaired) that had authority to act for the council when it was not in session. The Advisory Committee also was empowered to develop an agenda for the council and could recommend legislation. MacDonald also chaired the Intergovernmental Relations Committee.

The combination of this virtually unlimited executive power, combined with the ample evidence uncovered in U.S. Senate hearings from 1987 to 1989 of MacDonald's leading involvement in the tribe's controversial purchase of the 491,000-acre Big Bo Ranch, in which he was alleged to have accepted bribes and kickbacks from contractors, led to an intense struggle for power in Window Rock. By early spring 1989, a majority of the tribal council had grown weary of these developments and placed MacDonald on involuntary administrative leave pending the investigation of the allegations against him. Leonard Haskie was appointed as interim chairman.

MacDonald and his supporters fought these actions over an eleven-week period, despite the fact that the Navajo Supreme Court had upheld the council's power to place a chairman on administrative leave. The conflict eventually escalated into a deadly confrontation that erupted in Window Rock on July 20, 1989, between MacDonald's supporters and the tribal council and the tribal police. Two Navajos died and ten others were injured in the fighting.³³

In the fall of 1989 and in later trials, MacDonald was tried and convicted on numerous counts of bribery, instigating a riot, fraud, racketeering, ethics violations, extortion, and conspiracy. He was sentenced to fourteen years in a federal penitentiary. In December 1989, the tribal council, urgently aware of the need to correct those structural problems in Navajo government that had fostered MacDonald's rise and maintenance of power, set about the task of restructuring the relationship between the executive and legislative branches.³⁴

On December 15, 1989, by a vote of 44 to 17 with 13 abstentions, the Navajo Tribal Council enacted a landmark resolution, CD-68-89, entitled "Amending Title Two (2) of the Navajo Tribal Code

and Related Action." This law became operational April 11, 1990. The opening section declares:

Whereas:

1. Pursuant to 2 N.T.C., Section 101, the Navajo Tribal Council is the governing body of the Navajo Nation; and

2. Recent controversy involving the leadership of the Navajo Nation has demonstrated that the present Navajo Nation Government structure allows too much centralized power without real checks on the exercise of power. Experience shows that this deficiency in the government structure allows for, invites and has resulted in the abuse of power; and

3. The Judicial Branch has been reorganized by the Judicial Reform Act of 1985 . . . and treating the Judicial Branch as a separate branch of government has proven to be beneficial to the Navajo Nation and has provided stability in the government; and

4. The lack of definition of power and separation of legislative and executive functions have also allowed the legislative body to overly involve itself in administration of programs thereby demonstrating a need to limit the legislative function to legislation and policy decision making and further limit the executive function to implementation of laws and representation of the Navajo Nation; and

5. There is an immediate need to reorganize the Navajo Nation government by defining the powers of the legislative and executive branches and impose limitations on exercise of such powers; and

6. The number of standing committees of the Navajo Tribal Council has grown to eighteen (18) and some standing committees can be combined . . . thereby reducing the number of standing committees to twelve (12) and to provide for a more efficient and responsive committee system; and

7. The reorganization of the Navajo Nation Government as proposed herein is intended to meet the immediate needs of the Navajo people for a more responsible and accountable government and will have no effect on the long term Government Reform Project which will proceed as authorized and directed by the Navajo Tribal Council; and

8. It is in the best interest of the Navajo Nation that the Navajo Nation Government be reorganized to provide for separation of functions into three branches, and provide for checks and balances between the three branches until the Navajo People decide through the Government Reform Project the form of government they want to be governed by.³⁵

In effect, a number of impressive changes were implemented as a result of this resolution:

- Formal separation of powers between the executive and legislative branches.
- Diluted the power of the chief executive by creating the office of Navajo Nation president and vice-president who now served as the nation's chief executive officer. The president no longer served as head of the legislative branch.
- Created a speaker of the council position. This individual presides over the council's deliberations.
- Defined and set limits on the powers of the executive and legislative branches.
- Reduced the number of standing committees from eighteen to twelve.
- The power to appoint the membership of the legislative committees was taken from the chairman/president and given to the speaker of the council, subject to confirmation by the council.

Despite these important and much needed reforms (see Figure 1 for a representation of the current government structure), the Navajo people still were not given the opportunity to have any input into these changes, and the Title Two Amendments have not yet been taken before the Navajo electorate for their approval. In effect, even as the Navajo Nation government becomes more democratic, these changes lack fundamental political legitimacy because the Navajo people have yet to sanction the government's existence in a formal manner. Nevertheless, under the Title II Amendments, three Navajo presidents have so far been popularly elected (Zah in 1990, Albert Hale in 1994, and Kelsey Begaye in 1998), although both Hale and his immediate successor, Thomas Atcitty, were forced out of office for ethical improprieties. Still, the fact that they left office in a peaceful fashion is a testimony to the stability of the current structure of government.

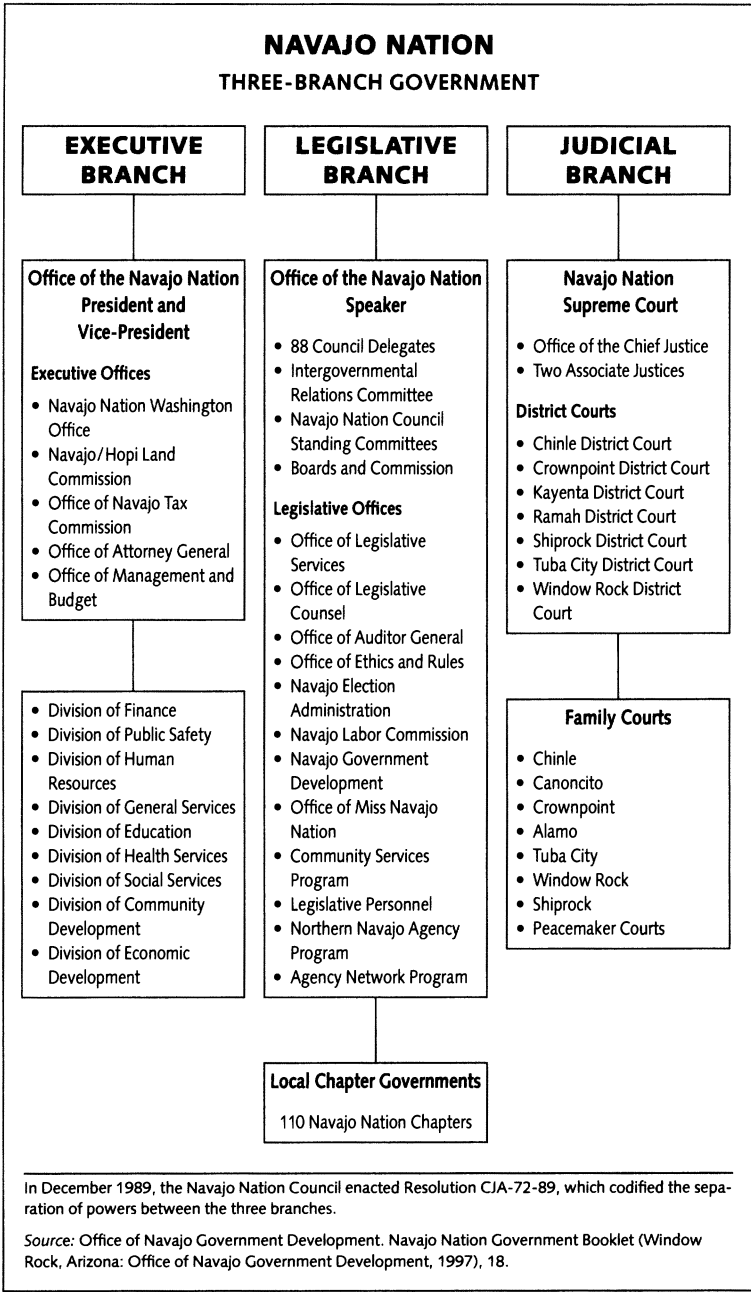


Figure 1. Three-branch government of the Navajo Nation

A DINÉ POLICY PORTFOLIO

The Navajo Nation government, like all indigenous and nonindigenous governments, is confronted by a battery of critical issues that push it hither and yon. We have already dealt with many of these—the

Navajo Nation's relationship with the federal government; the nation's struggle with democratization; and the political corruption scandals of Chairman Peter MacDonald, which led to the latest surge of democratic reforms. But even this surge has not yet led to the ultimate step in the process of democratization—when the Navajo policy makers concede that the Navajo people are the legitimate fount of Navajo sovereignty.

I will describe and discuss three of the ongoing public policies of importance to the Navajo government—land disputes, gaming, and taxation. Suffice it to say, there are many others, and entire texts could be written about each of these. For example, a quick review of just the most recent Navajo president's annual reports reveals discussion, commentary, and concern about issues such as the rising tide of juvenile crime, concerns about the quality and quantity of water, matters relating to Navajo education, the relationship of the nation to the states and the federal government, eastern Navajo land consolidation, taxation matters, lack of quality housing, ongoing disputes—both land and religious—with the Hopi Nation and the San Juan Band of Southern Paiute, the rights of off-reservation Navajos, health care, economic development, environmental issues around deforestation, coal and uranium extraction, etc., special problems of Navajo veterans, and concerns about retention and application of traditional Navajo culture and philosophy. I have chosen to focus on three particular topics. The first, the Navajo-Hopi land disputes, entails past, present, and future intertribal possibilities. The second, Indian gaming, is a potential issue of great economic and moral importance. The third, taxation, also has important economic connotations, but also indicates that the nation has evolved as a government into a more self-determined entity.

NAVAJO/HOPI LAND DISPUTES

Of the many issues confronting the Navajo government, this may easily be the one most recognized by parties inside and outside the nation. The disputes arise from an exceedingly complicated set of situations with roots dating back to at least 1882, if not before. The land tension involves not only the two tribal governments (and their legal staffs) but many other parties who have been involved over the years, including various agencies of the federal government, state governments, corporate interests, individual ranchers and landowners, cities, and two other little discussed tribes—the San Juan Band of Southern Paiute and the Zuni Indians of New Mexico.

The conflicts have spawned countless federal and state lawsuits, several congressional laws, many tribal resolutions, a new federal agency (the Navajo-Hopi Relocation Commission), and needless to say, heart-break on the part of those Navajo and Hopi (over nine thousand Navajo

and one hundred Hopi) who were required by federal law to relocate. The relocation of members of both tribes constituted the largest relocation (forced for some, voluntary for others) of any racial/ethnic group since the Japanese-American relocations during World War II. It is also the most expensive Indian relocation, costing at least \$330 million by 1997. A wealth of literature³⁶ has also been generated by the conflicts between the tribes and others, though the reader is cautioned to read material presented from both tribes' perspectives before drawing any conclusions.

Background of the Disputes

Briefly, the issue is this. After the Navajo Reservation was created in 1868, a later Hopi Reservation, located southwest of the Navajo Reservation, was established in 1882 through an executive order issued by President Chester A. Arthur. This order set aside 2.5 million acres for the Hopi and "such other Indians" the Secretary of the Interior might see fit to settle there. As the Navajo population expanded, and with it their land base, gradually the boundaries of the Navajo Reservation came to engulf the Hopi Reservation, and Navajo people settled within the 1882 executive-order Hopi Reservation lands.

Even as this land conflict began to loom, another arose in 1934 when Congress added about 234,000 acres of land to the Navajo Reservation in the Western Agency. This acreage, just east of Tuba City, happened to include the Hopi nation's westernmost village, Moencopi. This time the language of the congressional act was the reverse of the 1882 executive order. The law stated that the land was for the benefit of Navajos and "such other Indians as are already settled thereon." The Hopi, however, claimed the entire area as compensation for Navajo occupancy elsewhere within the 1882 Hopi Reservation.³⁷

This formed the basis of what would become known as the Bennett Freeze area, named after CIA Robert Bennett, who in 1966, at the urging of Secretary of the Interior Stewart Udall, placed severe limitations on construction and development in the 1934 disputed lands. Any future development would require the consent of both tribes and all revenue from the land would go into a special account to be held until the respective rights of both tribes could be determined.

The construction freeze has left an indelible mark on the over seven hundred families living in the contested area. Although originally developed as "a means of encouraging negotiation over an age-old dispute . . . the Bennett Freeze gradually developed into an intrusive and burdensome policy . . . forcing [the Indians] to live in poverty by denying them the right to enlarge, to maintain, and even to repair their homes."³⁸

The construction ban was temporarily lifted in 1992 by federal

judge Earl Carroll. It was reinstated before it was again lifted in 1996 after the two tribes reached an agreement. However, the freeze remained on some 700,000 acres the Hopi Nation claims. Congress got involved when Representative John D. Hayworth introduced H.R. 104 on January 6, 2001, which would legislatively repeal the Bennett Freeze, ending what Hayworth called "a gross treaty violation with the Navajo Nation." As of this writing (fall 2001), this bill had not been enacted.

The land problems between the two tribal nations festered throughout the middle part of the twentieth century. Delicate negotiations between the tribal councils and their attorneys failed, and a court settlement, which called for joint use and occupancy by the two tribes, also failed to resolve the profound differences between the Navajo and Hopi governments. The Hopi, for their part, demanded a partition of the 1882 reservation that would clarify and affirm their land rights. The Navajo Nation, for its part, wanted its members to be able to remain where they were in the disputed area and preferred buying out the Hopi Nation's interests.

Congress responded in 1974 with P.L. 93-541,³⁹ which provided for partition—a fifty-fifty division of the 1.8 million acres of land—between the two tribes. An independent, temporary relocation commission was established by the law to oversee the relocation of the affected tribal members who, after land division, were found to be on the "wrong side of the line." Houses and relocation expenses were to be provided by the federal government. Relocation was scheduled to be completed by 1986.

Human conflicts like this that include issues of property rights (land, livestock, water, coal), religious freedom concerns (access to sacred shrines and eagle gathering areas and use of eagle parts), corporate involvement, and the psychological, emotional, and formal disruptions and violence they generate, rarely conform to governmental timetables. Although the vast majority of Navajos and all Hopis have been relocated, the process, as of 2001, is not yet complete. The incompleteness stems from the persistent resistance of some two to three hundred Navajos (the figures vary) who refuse to leave the lands they feel culturally and religiously connected to: lands that the Hopi Nation has legally owned since 1882 and has been spiritually and culturally linked with for many more centuries.

The fierce resistance of this group of Navajo led Congress in the fall of 1996 to enact yet another law, P.L. 104-301, the Navajo-Hopi Land Dispute Settlement Act, which implemented the Accommodation Agreement that had been worked out over the previous five years. The Land Dispute Act ratified the settlement of four claims of the Hopi nation against the federal government and provided the necessary authority for the Hopi to exercise jurisdiction over their lands by issuing

seventy-five-year lease agreements to the Navajos still residing on Hopi-partitioned lands. The Hopi are to be paid \$50 million by the United States for lost rents and to enable the tribe to buy new lands.⁴⁰

The Navajo Nation Council had already enacted resolutions in 1994 and 1995 that opposed the Accommodation Agreement in its original form because, according to the nation, it did not protect the religious rights of the Navajo residents. While morally opposed to relocation, then president Albert Hale noted in a speech on February 1, 1997, that changes in the Accommodation Agreement, implemented with the passage of Public Law 104-301 in 1996, spearheaded by the Navajo residents themselves, guaranteed them religious protection. As such, he declared that "this agreement represents the only remaining means to establish their legal basis for continued residency on Hopi Partitioned Lands. Will they accept what their fellow Navajo neighbors have negotiated? I submit to all my people: the Navajo Hopi Partition Lands residents should sign the Accommodation Agreement."

The council, however, in a special session later in February, reaffirmed its earlier resolution "opposing the Accommodation Agreement in its present form" and recommended an extension of the March 31, 1997, deadline. The council also expressed "adamant opposition" to forced eviction of Navajos.⁴¹ Navajo residents were given until March 31, 1997, to sign the seventy-five-year leases (renewable for another seventy-five years) with the Hopi Nation, although the ones who refused to sign were not evicted immediately. If they agreed to relocate, the federal government was required under the 1996 law to pay for their moving expenses and build them a home, a process that takes anywhere from six months to more than a year.

NAVAJOS AND TRIBALLY SPONSORED GAMBLING (GAMING)

Since the 1980s, many tribal governments have introduced legalized gambling as a means to generate revenue to offset dramatically decreased federal funding and to develop their own economic base. In fact, tribes were encouraged by the Reagan administration to pursue tribally owned Indian gambling enterprises as one means of counterbalancing the severe cuts in federal expenditures his administration had implemented. After an important Supreme Court decision in 1987, *California v. Cabazon Band of Mission Indians*,⁴² which held that states could not enforce their civil/regulatory gaming laws to prohibit gaming on Indian lands, Congress stepped forward the following year and enacted the Indian Gaming Regulatory Act (IGRA).⁴³

This act had three broad goals: to promote tribal economic development, self-sufficiency, and strong tribal government; to provide a regulatory base to protect Indian gaming from organized crime; and to

establish a National Indian Gaming Commission. The act separated Indian gaming into three classes. Class I was strictly social gambling and solely under tribal jurisdiction. Class II included bingo, pull tabs, etc. This type was subject to tribal jurisdiction, with federal oversight. It also had to be legal under existing state law. Class III, potentially the most lucrative, included keno, lottery, pari-mutuel, slot machines, casino games, and banking card games. This class required a tribal ordinance, permission from the Indian Gaming Commission, and the state had to permit the activity. In fact, tribes were required to conduct Class III gaming in conformance with a tribal-state compact. If a state, such as Utah, did not allow Class III gaming, then tribes were denied the chance to engage in it.

States were required under the act to make a "good faith" effort to negotiate a tribal-state compact with those tribes who wanted to pursue these gaming ventures. The act authorized a tribe to bring suit in federal court against a state in order to force performance of that duty if the state refused to act in good faith and in good time to work out a compact. This final provision, however, was changed when the Supreme Court ruled in *Seminole Tribe of Indians v. Florida*⁴⁴ in 1996 that the Eleventh Amendment to the Constitution prevents Congress from authorizing suits by tribes against states absent state consent.

In fact, the IGRA gave states a voice, for the first time, over internal economic issues that previously were left solely to the discretion of the tribes and their trustee, the federal government. The requirement that tribes have to negotiate a compact with a state for Class III gaming operations, in effect, provided state officials with powerful leverage over a tribal nation's internal economic decisions.

States, with only a few exceptions (e.g., General Allotment Act of 1887, Public Law 280 of 1953, terminated tribes), have rarely had any direct say, much less veto power, over internal tribal decisions. Several reasons account for this. First, the doctrine of tribal sovereignty recognizes the right of tribal nations to manage their own affairs without state interference. Second, the nation-to-nation treaty relationship that states were precluded from participating in provides tribes a measure of protection from state intrusion. And third, many western states—including Arizona and New Mexico—were required to insert "disclaimer" clauses in their constitutions in which they assured the federal government that they would never attempt to interfere in tribal affairs and would never attempt to tax Indian trust lands. Despite this wealth of protection, however, the ideology of states' rights activism has grown tremendously in the last ten years, and Congress and the Supreme Court are more often siding with states when they are competing with tribes.

For some tribes, such as the Mashantucket Pequot of Connecticut, the Cabazon Band of Mission Indians of California, or the Ak-Chin

Community of Arizona, Indian gaming, as the business has come to be called, has brought billions of dollars, provided jobs for tribal members, and generally enabled the successful tribes to attain a level of economic self-sufficiency they had not enjoyed since before the days of European colonialism. Indian gaming has generated jobs, revenues, and other economic benefits to local and state economies as well.

For other tribes, however, such as the Mohawk and Oneida of New York, while gaming has generated significant revenue, it has also led to severe intratribal tension, sometimes leading to violence, and has produced other negative social consequences as well. More important, it has generated a severe backlash in many state governments and among more established gambling interests in Las Vegas and New Jersey. States and the players in Vegas and Jersey are envious of the riches—both actual and perceived—that tribes are enjoying. The backlash has worked its way into Congress where bills are pending that would reduce the tribes' gaming options, and into the Supreme Court where recent decisions have restricted the sovereignty of tribes while uplifting the sovereign powers of states.⁴⁵

As of 2001, 196 of the 561 tribal entities were operating 309 gaming facilities in twenty-eight states. In Arizona alone, 17 tribal nations have gaming operations, including Cocopah, Fort McDowell Mohave-Apache, Gila River, Hualapai, San Carlos and White Mountain Apache, the Pascua Yaqui, etc. The Fort McDowell tribe, for example, in 1993 announced profits of \$41 million, which was split thus: \$12.3 million for tribal government operations; \$15.6 for economic development; \$2 million for community welfare; \$410,000 for contracts with local governments; \$410,000 for local charity; and \$10.3 million for per capita (individual) payments to tribal members—averaging about \$12,000 per person.⁴⁶ The only tribes in Arizona that do not have gaming as of 2001 are the Havasupai, Hopi, San Juan Southern Paiute, and the Navajo Nation.⁴⁷

Navajos Reject Gaming

Historically, Navajos, like most social groups, enjoyed a number of informal gambling rituals. For example, the shoe game is still very popular, and certainly gambling was done on horse and foot races. Card games were and still are played quite frequently at squaw dances and other gatherings.⁴⁸ This type of gambling is very different from the type of state or tribally sanctioned gaming that is backed by the force of law and is designed to generate revenue for governmental purposes. From a governmental perspective, the Navajo Nation passed a resolution in 1977 that criminalized gambling if the person engaging in it "intends to derive an economic benefit other than personal winnings" from the endeavor. However, seemingly in anticipation of tribal-

sponsored gambling, this law was amended in 1993 by providing an "exception" to the offense section. Resolution CN-81-93 declared that "it shall not be unlawful for any person to engage in the activities constituting this offense if done as part of an economic initiative of the Navajo Nation Government, or as a gaming licensee of the Navajo Nation Government."⁴⁹ In a footnote to this law, it was stated that the effective date of this amendment was "subject to enactments of a comprehensive statutory scheme to control gaming within the Navajo Nation by the Navajo Nation Council."

Despite the council's optimism, however, and with so many tribes having already ventured into gaming as a prime economic generator, why has the Navajo Nation not joined in the process? More specifically, why has the Navajo Nation electorate, in two separate tribal referenda—1994 and 1997—explicitly rejected the establishment of Indian gaming within the reservation?

According to research conducted by Henderson and Russell, the Navajo people rejected the gaming referendum in November 1994 by a vote of 23,450 to 23,073 largely because of moral concerns. It appears that these concerns outweighed the perceived potential for revenue because "unlike other tribal casinos which generally attract predominantly non-Indian patrons, the proposed casinos in the Navajo Nation would be patronized by large numbers of Navajos."⁵⁰ Not easily dissuaded, the council pushed forward and in 1997 authorized yet another national referendum by Resolution CAP-26-97 during the spring session. Once again, Navajos rejected the measure. While no scientific research has been done on the second referendum, in all likelihood the Navajo turned away from gaming for reasons similar to those in 1994—concern about the social welfare of tribal members. As Richie Nez, executive director of the Navajo Election Administration put it: "No matter how you educate people, especially the older people, they still associate gambling with alcoholism, and all other vices. . . . They just don't see any good coming out of it."⁵¹

This issue pits the general social and moral concerns of the Navajo electorate against the financial and economic concerns of a majority of those in the government who believe that the nation is losing out on millions of dollars and thousands of permanent jobs. Gaming is an issue that promises to be revisited yet again in the future by the council and by the nation.

An interesting question is, why has the council twice placed this issue before the people using the referendum process, yet refused to put the question of a tribal constitution, or one of the proposed alternative government ideas, or even the Title II amendments before the people for their consideration? Certainly, economic considerations are vitally important to the nation as their nonrenewable natural resource endowment (especially coal, gas, etc.) continues to decline, which

directly reduces the revenues coming into the tribal treasury. But the question of governmental legitimacy, from the standpoint of what constitutes the actual basis of tribal sovereignty, is, one could argue, even more vital to the character of the nation.

TAXATION AND THE NAVAJO NATION

Euro-Americans and taxes have coexisted uncomfortably since the beginning of the American republic. "Taxation without representation," after all, was one of the catalysts sparking the American Revolution, since American colonists resented the idea of being forced to pay taxes to a distant government, Great Britain, that they had no actual representation in. Americans then and now, including Indian peoples, knew, as Chief Justice John Marshall stated in *McCulloch v. Maryland* in 1819, that "the power to tax involves the power to destroy." Furthermore, anyone holding a job is aware, because of hefty tax deductions, of the truthfulness of the famous expression: "In this world nothing can be said to be certain, except death and taxes."

But taxes are also the lifeblood of most non-Indian governments and are becoming increasingly important to tribal governments as well. Taxes raise the revenues required to hire employees, provide essential services (libraries, roads, schools, etc.), and conduct government affairs. Of course, taxation, like many issues we have been discussing, touches Indian lives and reservation lands in a different way than it touches other Americans. For example, the U.S. Constitution, in the section describing how U.S. representatives were to be elected to Congress, required each state, when it counted its citizens for purposes of congressional apportionment, to exclude "Indians not taxed." This same expression is also found in section 2 of the Fourteenth Amendment, which was ratified and proclaimed in 1866. This expression was included because Indians were not citizens of the United States when the Constitution was drafted, and most had still not been enfranchised as late as the 1860s when the Fourteenth Amendment was ratified. Indians remained citizens of their own sovereign nations.

The passage of several laws, including the 1924 Indian Citizenship Act, altered the status of individual Indians vis-à-vis federal taxes. And after some court cases in the 1930s, 1940s, and 1950s, it was determined by the federal government that individual Indians, as citizens of the United States, were indeed required to pay federal income taxes unless a treaty or statute exempted them.⁵²

Tribal governments, however, as sovereign entities, are generally exempt from paying most federal taxes and nearly all state taxes. In fact, the Internal Revenue Service has determined specifically that tribes are exempt from federal income taxes. But the immunity from some taxation that tribes have is not nearly as secure as the immunity states enjoy

from federal taxation. Tribes periodically face concerted attempts by certain state and federal legislators to require them to pay taxes, notwithstanding tribal sovereign status. States do not face such taxation assaults by the federal government.

The Power of the Navajo Nation to Tax

Until the 1970s, the Navajo Nation did not collect taxes to finance its operations, although as we have shown, the nation was clearly entitled to collect taxes. Ironically, while the nation was not collecting taxes, state governments were using their taxing authority and were earning sizable sums of money by taxing certain businesses operating within Navajo lands. In fact, in a study done by Michael Benson in 1975, he learned that besides paying applicable federal taxes, Navajos were also paying taxes to support the state governments of Arizona, New Mexico, and Utah. They were also contributing to six county governments in those three states—Apache, Coconino, and Navajo in Arizona; McKinley and San Juan in New Mexico, and San Juan in Utah. Benson further noted that:

State and county governments collect taxes on property located in the Navajo Nation and on income derived from activities in the Navajo Nation. They directly tax the incomes and property of non-Navajos who live, work or conduct business in the Navajo Nation. They collect a lot of taxes "indirectly" from Navajos and non-Navajos by taxing wholesalers who supply Navajo Nation retailers with such commodities as gasoline and cigarettes.⁵³

What was particularly frustrating, as this report showed, was that non-Navajo governments were receiving far more money in taxes from the development of Navajo Nation resources than the Navajo Nation was securing in income from royalties and lease arrangements from those same resources. For example, in 1972 the Navajo Nation received \$1.4 million in royalties for the coal that was used at the Four Corners Power Plant. By contrast, the state, county, and local governments were earning \$7.2 million from taxes on that same coal.⁵⁴

As a result of this kind of disparity, and with the growing realization that the nation's mineral resources were not inexhaustible, the Navajo government in 1974 enacted a resolution establishing a Navajo Tax Commission. The MacDonald administration was slow in getting the commission started, but it was eventually set up and began the process of devising a taxation program to correct the evident taxation inequities. The commission's work led to two tribally approved tax ordinances in 1984: a Possessory Interest Tax and a Business Activity Tax.

The taxes were immediately challenged by individuals and companies subject to them, although, as noted earlier, one of the inherent powers of any sovereign is the power to tax. Tribal governments, therefore, have the legal right to tax their citizens, noncitizens, and businesses and corporations doing business within their lands. As the Supreme Court said in 1982 in *Merriam v. Jicarilla Apache Tribe*:

The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribal government to raise revenues for its essential services. The power does not derive solely from the Indian tribe's power to exclude non-Indians from tribal lands. Instead, it derives from the tribe's general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction.⁵⁵

Notwithstanding this important decision, the Navajo Nation taxes continued to be challenged by companies like the Kerr-McGee Corporation. Ultimately, in 1985, the Supreme Court ruled in *Kerr-McGee Corporation v. The Navajo Tribe*⁵⁶ that the nation possessed the sovereign power to enact and impose tax laws without approval by the Interior Department.⁵⁷

The Possessory Interest Tax (PIT) requires any owner of a lease granted by the Navajos to pay an annual tax on the value of the lease site and natural resources thereunder at a rate of between 1 and 10 percent. The Business Activity Tax (BAT) requires anyone who is engaged in production activities on the reservation to pay a tax on the gross receipt from such activities at a rate of between 4 and 8 percent. Both ordinances have been amended several times, and other taxes have since been enacted as well.

In 1985 the council established an Oil and Gas Severance Tax, a tax imposed on the severance of, producing, or taking from the soil products within the nation at the rate of between 3 and 8 percent. In addition, in 1992 the council created a Hotel Occupancy Tax that "imposed on a person who, under a lease, concession, permit . . . pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing \$2 or more each day." The tax rate initially was 5 percent, but in 1994 it was increased to 8 percent. This tax was also challenged by non-Indians. In May 2001, in a landmark ruling that dramatically infringed on Navajo (and by extension other tribal nations) sovereignty, *Atkinson Trading Co. v. Shirley* (531 U.S. 645), the U.S. Supreme Court unanimously held that since the Navajo's Hotel

Occupancy Tax had not been authorized via treaty or congressional statute, and since it fell upon nonmembers on non-Indian fee land—even though the business was operated within the borders of the reservation—the Navajo Nation could not lawfully impose the tax.

The council, in 1995, instituted two new measures to generate revenue for the tribal coffers: a Tobacco Products Tax and Licensing Act (a 40 cents per pack tax is assessed on tobacco sales) and a Fuel Distributors Licensing Act (taxing any person or business delivering fuel on the reservation). The Tax Commission is also in the early stages of discussing the need for a Gross Receipts Tax, which if ever enacted would impose on the gross receipts of any person engaged in trade, commerce, manufacture, power production, or any other productive activity a tax at a heretofore unspecified rate. This tax would exempt the sale of gasoline, church-sponsored activities, prescription drugs, wages, food stamps, etc.⁵⁸

These taxes and license fees generate an average of \$30 million a year for tribal government operations, although this figure will be reduced in the wake of the *Atkinson* ruling. The BAT brings in \$15 million; the PIT \$10 million; the Oil and Gas Severance Tax about \$4 million; the Hotel Occupancy Tax about \$1 million. The remainder comes in from the tobacco and fuel taxes.⁵⁹

Importantly, the taxes are imposed on Navajo citizens as well as particular non-Navajo business activities, although the Navajo Nation itself is exempt from being taxed. As the amount of nonrenewable resources continues to decrease, taxation and the revenues it produces will become even more important to the nation's economy.

CONCLUSION

If this sampling of policy issues is any indication of what the future holds for the Navajo Nation government, then it is clear that the Navajo people and their elected and appointed representatives face a future, as they did a past and present, that is full of both promise and tension. Promise because, as we have seen, the Diné people are particularly adept at finding creative ways of taking care of themselves, their resources, and managing their affairs with others. Tension, however, because internal conflicts, a gradually diminishing pool of natural resources, and the inconsistent nature of Navajo political relations with counties, states, and the federal government mean that consistent harmony is not likely. This is understandable. But the continuing move toward full democracy, which intensified with the Title II Amendments of 1989, means that the nation is heading in a positive direction.

Of course, the Navajo people have still not had nor have they taken the opportunity via a referendum/initiative to express their collective will about what shape Diné democracy should be like, and this

must be rectified. But even after this is accomplished, assuming that it will be, everything will not be settled. Democracies, no matter their location, are not perfect governments. It is up to successive Navajo generations to nurture and strengthen the foundation of Navajo government.

Perhaps former Chief Justice Tom Tso put it best when asked by a reporter as he neared retirement what he thought his primary contributions to the Navajo court system had been. Tso responded by saying:

I don't know if I've done anything extraordinary. Basically, I did my job, which was to hear and to cite cases—giving everybody a fair shake. I've tried to be very fair about the procedures and to make decisions based on the facts and the laws. I guess what I am trying to say is, that during all of my years on the bench, I just tried to do what a judge should be doing. There is no significant magic. I've had a lot of resources and a lot of cooperation from the leadership and the staff and we just did our jobs. We tried to look to Navajo customs, tradition and culture, and we found that many of our decisions and laws were influenced by those traditions.⁶⁰

This statement by a highly respected Navajo jurist exemplifies the strength, hindsight, and foresight of the Diné spirit that entails cooperative living; respect for tradition, culture, and language; a focus on fairness and integrity; and the pursuit of justice.

N O T E S

- 1 Most of the statistical data cited are found in Duane Etsitty, compiler, *NN Fax 93* (Window Rock, Ariz.: Division of Economic Development, 1994).
- 2 Indian trust land is Indian-owned land, title to which is held in trust by the United States. This broadly means that the actual "ownership" of the land is divided between the federal government, which holds the legal title, and the tribe (or individual Indian), which holds the full equitable title. Trust land is not subject to taxation, and in general, neither the federal government nor the Indian tribe or the individual owner can sell or otherwise dispose of trust land without the consent of the other party. A major exception to this theory, however, is that the federal government has claimed and acted on a number of occasions to unilaterally "take" Indian land using the controversial and problematic doctrine of "plenary power." "Plenary" in this instance means absolute or unlimited.
- 3 Special thanks to Mr. Trib Chaudhury of the Division of Economic Development for these most recent employment and spending figures.
- 4 See Jeff J. Cornntassel and Richard Witmer II, "American Indian Tribal

- Government Support of Office-Seekers: Findings from the 1994 Election," *Social Science Journal* 34, no. 4 (1997): 518.
- 5 Kenneth Janda, Jeffrey M. Berry, and Jerry Goldman, *The Challenge of Democracy: Government in America*, brief ed., 3d ed. (Boston: Houghton Mifflin, 1998), 128–29.
- 6 Marley Shebala, "Back to the Drawing Board," *Navajo Times*, September 7, 2000, A1.
- 7 Author has a copy of this policy accord.
- 8 See James W. Zion, *Navajo Peacemaker Court Manual* (Window Rock, Ariz.: Navajo Nation, 1982); Tom Tso, "The Process of Decision Making in Tribal Courts," *Arizona Law Review: Indian Law Symposium* 31, no. 2 (1989): 225–35; and Robert Yazzie, "Life Comes from It: Navajo Justice Concepts," *New Mexico Law Review: Indian Law Symposium* 24, no. 2 (spring 1994): 175–90.
- 9 See Tom Tso, "Moral Principles, Traditions, and Fairness in the Navajo Nation Code of Judicial Conduct," *Judicature* 76, no. 1 (June–July 1992): 15–21.
- 10 Wilson and John J. Dilulio Jr., *American Government: Institutions and Politics*, 8th ed. (Boston: Houghton Mifflin, 2001), 14.
- 11 Hastóí were considered wise elders. Hataali were medicine men or singers.
- 12 W. W. Hill, "Some Aspects of Navajo Political Structure," *Plateau* 13, no. 2 (October 1940): 24.
- 13 Ibid.
- 14 J. Lee Correll, comp., *Through White Men's Eyes: A Contribution to Navajo History* (Window Rock, AZ: Arizona Bicentennial Commission, 1976), 146.
- 15 Richard Van Valkenburgh, "Navajo Government," *American Quarterly* 4 (winter 1945): 68.
- 16 Bill P. Acrey, *Navajo History to 1846: The Land and the People* (Shiprock, N.M.: Department of Curriculum Materials Development, 1982), 114. And see J. Lee Correll's account of Antonio Sandoval, another of the so-called Enemy Navajo in "Sandoval: Traitor or Patriot?" Navajo Historical Publications, Biographical Series, no. 1 (Window Rock, Ariz.: Navajo Tribal Printing Department, 1970).
- 17 Robert W. Young, *A Political History of the Navajo Tribe* (Tsaile, Ariz.: Navajo Community College Press, 1978), 43.
- 18 Robert W. Young, "The Rise of the Navajo Tribe," in Edward Spicer and Raymond Thompson, eds., *Plural Society in the Southwest* (Albuquerque: University of New Mexico Press, 1972), 184.
- 19 Ibid., 191.
- 20 Richard White, *The Roots of Dependency: Subsistence, Environment, and Social Change among the Choctaws, Pawnees, and Navajos* (Lincoln: University of Nebraska Press, 1983), 253.
- 21 Ibid., 248.
- 22 Tom Dodge had resigned in May and accepted employment with the BIA.
- 23 Young, "The Rise of the Navajo Tribe," 203–5.
- 24 Ibid.
- 25 Ibid., 208.
- 26 Ibid., 211.
- 27 Peter Iverson, *The Navajo Nation* (Albuquerque: University of New Mexico Press, 1983), 68.
- 28 Young, "The Rise of the Navajo Tribe," 221.

- 29 Ibid., 224.
- 30 Iverson, *The Navajo Nation*, 175.
- 31 See *ibid.* for a relatively unbiased look at these issues, and consult Iverson's article entitled "Peter MacDonald," in R. David Edmunds, ed., *American Indian Leaders: Studies in Diversity* (Lincoln: University of Nebraska Press, 1980), 222–41. And see Sandy Tolan's "Showdown at Window Rock" (*New York Times Magazine*, November 26, 1989, 28, 30–31, 36–40, 74–75) for a more critical, if abbreviated, examination of MacDonald's tenure. But see Peter MacDonald's autobiography, *The Last Warrior: Peter MacDonald and the Navajo Nation*, written with Ted Schwarz (New York: Orion Books, 1993), for a decidedly and not surprisingly pro-MacDonald perspective on these and other issues related to MacDonald's tenure.
- 32 See George M. Lubick, "Peterson Zah: A Progressive Outlook and a Traditional Style" (in John R. Wunder, ed., *Native American Sovereignty* [New York: Garland Publishing Company, 1996], 241–66), for a good overview of Zah's first term as chair.
- 33 See U.S. Senate, "Final Report: A Report of the Special Committee on Investigations of the Select Committee on Indian Affairs," 101st Cong., 1st sess., 1989, S. Rept. 101-216, which contains a chapter on the Peter MacDonald corruption scandal. And see Sandy Tolan, "Showdown at Window Rock" (*New York Times Magazine*, November 26, 1989), for a good summary of the events leading to the violence. Also consult the *Navajo Times Today* for articles about these events.
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- 36 See, e.g., Jerry Kammer, *The Second Long Walk: The Navajo-Hopi Land Dispute* (Albuquerque: University of New Mexico Press, 1980); David M. Brugge, *The Navajo-Hopi Land Dispute: An American Tragedy* (Albuquerque: University of New Mexico Press, 1994); Emily Benedek, *The Wind Won't Know Me: A History of the Navajo-Hopi Land Dispute* (New York: Alfred A. Knopf, 1992); and Maureen Trudelle Schwarz, "Unraveling the Anchoring Cord: Navajo Relocation, 1974 to 1996," *American Anthropologist* 99, no. 1 (March 1997): 43–55. See also Hollis A. Whitson, "A Policy Review of the Federal Government's Relocation of Navajo Indians under P.L. 93-531 and P.L. 96-305," *Arizona Law Review* 27 (1985), for a dated but fairly objective account of the policy implications of this conflict. And see Catherine Feher-Elston, *Children of Sacred Ground* (Flagstaff, Ariz.: Northland Publishing Company, 1988).
- 37 Iverson, *The Navajo Nation*, 195.
- 38 John D. Moore, "Justice Too Long Delayed on the Navajo Reservation: The 'Bennett Freeze' as a Case Study in Government Treatment of Native Americans," *Harvard Human Rights Journal* 6 (spring 1993): 222–29.
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- 40 U.S. Congress, "Providing for the Settlement of the Navajo-Hopi Land Dispute, and for Other Purposes," S. Rept. 104-363 (Washington, D.C.: Government Printing Office, 1996).
- 41 CF-19-97.
- 42 480 U.S. 202.
- 43 102 Stat. 2475.
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- 45 See, e.g., the 1996 *Seminole* case, *Alaska v. Native Village of Venetie Tribal Government* (1998), *South Dakota v. Yankton Sioux Tribe* (1998), and *Strate v. A-1 Contractors*.
- 46 Heidi L. McNeil, "Indian Gaming: Prosperity and Controversy," in Malcolm Merrill, ed., *American Indian Relationships in a Modern Arizona Economy*, 65th Arizona Town Hall (Phoenix: Arizona Town Hall, 1994), 120.
- 47 Loa M. Schell, comp. and ed., *1995-1996 Tribal Directory of the Twenty-One Federally Recognized Indian Tribes of Arizona* (Phoenix: Arizona Commission of Indian Affairs).
- 48 Eric Henderson and Scott Russell, "The Navajo Gaming Referendum: Reservations about Casinos Lead to Popular Rejection of Legalized Gambling," *Human Organization* 56, no. 3 (1997): 294-301. Much of this section derives from this excellent article.
- 49 Title 17, Section 421, Navajo Nation Code.
- 50 Henderson and Russell, "The Navajo Gaming Referendum," 294.
- 51 *Ibid.*, 297.
- 52 See *Carpenter v. Shaw*, 280 U.S. 363 (1930), and *Squire v. Capoeman*, 351 U.S. 1 (1956).
- 53 Michael Benson, *Sovereignty: The Navajo Nation and Taxation* (Window Rock, Ariz.: DNA-People's Legal Services, 1976), 20.
- 54 *Ibid.*, 26.
- 55 455 U.S. 130, 139 (1982).
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- 57 See Robert W. Hanula, "The Navajo Tax System," *Arizona Bar Journal* (December-January 1988): 6-9.
- 58 Interview with Amy Alderman, an attorney for the Navajo Tax Commission, August 1, 1998.
- 59 *Ibid.*
- 60 Tom Tso, "Interview," *Arizona Attorney* 28, no. 9 (May 1992): 10.